

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH WHITE,

Plaintiff-Appellant,

v

NEW DIRECTIONS CENTER FOR CHRISTIAN
COUNSELING and JANET HANLEY,

Defendants-Appellees.

UNPUBLISHED

March 12, 1999

No. 204404

Wayne Circuit Court

LC No. 96-618835 NM

Before: O'Connell, P.J., and Gribbs and Talbot, JJ.

PER CURIUM.

This case involves allegations of professional misconduct. Plaintiff alleges that defendant Hanley, a limited-licensed psychologist, through defendant New Directions Center for Christian Counseling, provided individual counseling to her beginning in the fall of 1992. Plaintiff and her husband went to Hanley for joint marriage counseling beginning early in 1993, and attended two joint marriage counseling sessions in May and June 1995. Plaintiff alleges that Hanley became romantically involved with plaintiff's husband during the course of the marriage counseling. Plaintiff's husband continued to receive personal counseling from Hanley from 1993 until early 1996. Sometime during the course of the counseling, Hanley began an adulterous affair with plaintiff's husband. Plaintiff's husband divorced plaintiff in December 1995, and then married Hanley on January 27, 1996. Plaintiff filed this action two months later. Plaintiff sought damages for professional negligence, breach of fiduciary duty, breach of contract, failure to refer plaintiff to another specialist, abandonment, respondeat superior, intentional infliction of emotional distress and medical malpractice.

Defendants filed motions for summary disposition under MCR 2.116(C)(8), arguing that plaintiff's cause of action was essentially one for alienation of affections, which was abolished by statute. The trial court agreed, and granted defendants' motions. Plaintiff appeals as of right. We affirm in part, reverse in part, and remand for further proceedings.

In a factually similar case, *Nicholson v Han*, 12 Mich App 35; 162 NW2d 313 (1968), a panel of this Court considered whether the plaintiffs claims for breach of contract and fraud were affected by the statutory bar against alienation of affections.¹ This Court explained in *Nicholson* that the

essence of the abolished action for alienation of affections was the plaintiff's loss of a spouse's society, services, and comfort by means of the tortious conduct of the defendant. *Id* at 43. Because the facts alleged in the *Nicholson* plaintiff's claims of breach of contract and fraud fell "squarely within" the scope of alienation of affections, this Court held that dismissal of those actions was appropriate.

In the case before us, just as in *Nicholson*, the trial court properly concluded that plaintiff's claims of breach of contract and intentional infliction of emotional distress fall squarely within the scope of the abolished action for alienation of affections. We note that plaintiff's pleadings are less than clear. However, accepting all plaintiff's allegations as true for the purposes of this motion, it appears that the remainder of plaintiff's claims sound in professional malpractice.² Because *Nicholson* did not address the issue of professional malpractice, and because professional malpractice actions are specifically authorized by statute, we find that the trial court's ruling in this case was overbroad. See *Cotton v Kambly*, 101 Mich App 537, 540; 300 NW2d 627 (1980).

The issue before this Court is extremely narrow. A motion for summary disposition under MCR 2.116(C)(8) should be granted only if the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995). A motion under MCR 2.116(C)(8) is tested on the pleadings alone. All factual allegations contained in the complaint must be accepted as true along with any reasonable inferences or conclusions which can be drawn from the facts. *Id*.

Under Michigan law, a civil action for malpractice can be maintained against any member of a state licensed profession. MCL 600.2912; MSA 27A.2912. To prevail on a claim of malpractice, a plaintiff must prove that the licensed professional failed to perform according to accepted standards, and that the failure proximately injured the plaintiff. MCL 600.2912a; MSA 27A.2912(1). Because plaintiff's allegations in this case set out a prima facie case of professional malpractice, the trial court erred in dismissing this action. It is unclear from the record whether plaintiff will be able to establish that she had a professional relationship with Hanley when the affair began, or that Hanley breached the standard of care in a way that involved something more than alienation of affections. While we recognize that it may be difficult for plaintiff to prove her claim or to show compensable damages, those issues are not before us.

Plaintiff raises two other issues concerning the trial court's failure to compel defendant to answer interrogatories and its failure to enter a protective order in light of alleged discovery abuses. These issues have not been adequately briefed and need not be addressed by this Court. An appellant may not merely announce her position and leave it to this Court to discover and rationalize the basis for her claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Roman S. Gribbs

/s/ Michael J. Talbot

¹ See MCL 600.2901(1); MSA 27A.2901(1). The *Nicholson* Court also found plaintiff's action barred by the statutory abolishment of criminal conversation, which involved a showing of "an actual marriage plus adulterous intercourse." *Nicholson, supra* at 43, citing *Perry, supra*. Criminal conversation is not raised as an issue in the instant case.

² Plaintiff has already amended her pleadings twice. Although we find that the pleadings as amended sound in malpractice for the limited purposes of a motion under MCR 2.116(C)(8), they barely do so.